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VOLUME NO. 46

OPINION NO. 10

COUNTY ATTORNEY - Ethical requirements for part-time county attorneys with respect to office space and equipment;
COUNTY ATTORNEY - Use of office space provided by county for private practice;
COUNTY ATTORNEY - Use of equipment provided by county for private practice;
COUNTY ATTORNEY - Use of secretarial support provided by county for private practice;
COUNTY COMMISSIONERS - Duty to provide office space, equipment, and secretarial support for county attorney;
COUNTY COMMISSIONERS - Statutory authority to enter into contracts with county attorney for private use of office space, equipment, and secretarial support provided by county;
COUNTY OFFICERS AND EMPLOYEES - Performance by secretary employed by county of private practice work for county attorney;
ETHICS - Application of prohibition against use of public time, facilities, equipment, supplies, personnel, or funds for private business purposes;
MONTANA CODE ANNOTATED - Sections 2-2-102(6), 2-2-105(2), 2-2-121(2)(a), 2-2-125, 7-1-2103(3), 7-4-102, 7-4-2211, 7-4-2402, 7-4-2503(3), 7-4-2704(2), 7-4-2706, 7-4-2712, 7-4-2716, 7-5-2101(1), 7-5-2108, 7-8-2101, 7-8-2112, 7-8-2231;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 27 (1983), 28 Op. Att'y Gen. No. 42 (1959), 28 Op. Att'y Gen. No. 13 (1959), 23 Op. Att'y Gen. No. 20 (1949), 21 Op. Att'y Gen. No. 32 (1945), 16 Op. Att'y Gen. No. 212 (1935), 11 Op. Att'y Gen. No. 62 (1924), 10 Op. Att'y Gen. 167, 9 Op. Att'y Gen. 277, 8 Op. Att'y Gen. 96 (1919), 5 Op. Att'y Gen. No. 275 (1913), 3 Op. Att'y Gen. 64.

- HELD: 1. The county governing body may satisfy its obligation to provide office space for a part-time county attorney by providing space in a county building, or if no suitable space is available by renting office space, provided that use of the space for the county attorney's private practice occurs only through an agreement between the county and the county attorney leasing the use of the space for the county attorney's private business purposes.
2. In the alternative, the governing body can allow a claim by the county attorney for the rental of office space needed to conduct the county's business, provided suitable office space is not available in county buildings.

3. The county governing body may satisfy its obligation to provide necessary equipment for a part-time county attorney by providing the use of equipment owned by the county, or if no suitable equipment is available by renting equipment, provided that use of the equipment for the county attorney's private practice occurs only through an agreement between the county and the county attorney leasing the use of the equipment for the county attorney's private business purposes.
4. A secretary employed by the county to assist the county attorney may work on the county attorney's private business during time when the secretary's services are not needed on county business, provided the county attorney accounts for the time of the secretary spent on private business and reimburses the county for any county-compensated time spent on the county attorney's private business.
5. A claim by a county attorney for secretarial services reasonably required for the conduct of the county attorney's official duties is a legitimate claim against the county. The reasonableness of the claim is a question of fact vested in the sound discretion of the county governing body.
6. A part-time county attorney may conduct private practice using office space, equipment, or support staff provided by the county without violating Mont. Code Ann. § 2-2-121(2)(a) if the county governing body has agreed in writing to the arrangement in compliance with applicable statutes and common law rules governing the county governing body's authority over county property.

December 1, 1995

Mr. Blair Jones
Stillwater County Attorney
P.O. Box 179
Columbus, MT 59019

Dear Mr. Jones:

You have requested my opinion on issues arising from the enactment by the 1995 legislature of 1995 Mont. Laws ch. 562, a sweeping reform of the laws relating to ethical behavior by public officers and employees. As amended by chapter 562, Mont. Code Ann. § 2-2-121(2)(a) provides in pertinent part that "[A] public officer . . . may not . . . use public time, facilities, equipment, supplies, personnel, or funds for the officer's . . . private

business purposes." You inquire whether this provision prohibits arrangements which have existed, in some cases for decades, in counties employing a part-time county attorney under which the county furnishes office space, equipment, or support staff which the part-time county attorney uses in both the official capacity as county attorney and for purposes of a private law practice.

In Montana, the office of county attorney is a full-time position in counties with populations in excess of 30,000, and in any county with a lesser population in which the commissioners adopt a resolution, with the consent of the county attorney, making the position full-time. Mont. Code Ann. §§ 7-4-2704(2), -2706. In all other counties, the county attorney is authorized by law to engage in the private practice of law in addition to the official duties of the office. See 40 Op. Att'y Gen. No. 27 at 104, 107 (1983); 21 Op. Att'y Gen. No. 32 at 36, 37 (1945). As of July 1, 1995, 31 counties in Montana employed part-time county attorneys.

The law sets forth no requirement that a part-time county attorney work a particular number of hours on county business, nor does it limit the amount of time a part-time county attorney may spend on private practice matters. The law sets forth numerous specific duties of the office of county attorney. The county attorney undertakes to perform these duties, but does not undertake to expend a specific number of hours of time on county business each week. Many part-time county attorneys report that they give priority to county business (including representation of the State and its agencies in some cases, see Mont. Code Ann. §§ 7-4-2712, -2716), and conduct their private practices only to the extent that the time demands of the county's business allow. As a result, they report spending significantly more time on county business in any given month than on their private practice matters.

The county attorneys who serve part-time have entered into arrangements, in varying degrees of formality, with their respective counties under which the county attorney performs the duties of the office, receiving the statutory salary, see Mont. Code Ann. § 7-4-2503(3). In many cases, these arrangements provide additional support for the county attorney as well. For example, in some counties the county attorney is afforded office space in the county courthouse or other county building. In others, the county attorney receives an allowance to defray, in whole or in part, the cost of renting suitable office space, or the county attorney presents a claim for all or part of office rental expense, or the county and the county attorney otherwise share the rent obligation. In some counties, the county attorney is provided one or more full-time secretaries. In others, the county attorney receives an allowance from the county to defray, in whole or in part, the cost of hiring secretarial help. In some counties, the county attorney receives the use of office equipment, furniture, or office supplies provided by the county. Finally, in at least two counties the county attorney occupies two separate offices, one

from which to conduct county business and the other for the conduct of private practice matters. In short, there appear to be as many different models for the relationship between part-time county attorneys and their counties as there are part-time county attorneys.

Formal written agreements between county attorneys and their respective counties governing all the terms and conditions under which the county attorney receives these perquisites are the exception rather than the rule. In some cases, it appears that at most the commissioners have passed a resolution providing certain benefits or the use of certain property for the county attorney. In some cases, the county attorney and the commissioners enter into several written agreements covering the sharing of specific costs or the use of specific items of office equipment. In some cases, the arrangement is not documented at all, but has proceeded as a matter of custom developed over many years of experience.

The enactment of chapter 562 has called the legality of these arrangements into question. To understand how this occurred, it is necessary to review Montana's pre-1995 government ethics laws and compare them to certain changes made by the enactment of chapter 562. Prior to 1995, Montana's ethics in government laws provided three separate sets of rules of conduct: one governing state officers and employees, one governing legislators, and one governing local government officers and employees. The provisions governing local government officers and employees, Mont. Code Ann. § 2-2-125 (1993), did not prohibit use of government property for private business purposes by local officers and employees. Such a prohibition was found in Mont. Code Ann. § 2-2-121, but that statute applied by its terms only to "[a] state officer or employee."

Chapter 562 made a structural change in the ethics laws which changed that situation. The term "public officer" has been defined in the ethics laws since their adoption to include "any elected officer of a political subdivision of the state." Mont. Code Ann. § 2-2-102(6) (1993). Chapter 562 amended the coverage of § 2-2-121(2), changing the identification of the persons to whom it applies from "[a] state officer or employee" to "a public officer or public employee," a term which includes a county attorney by definition. By virtue of this change, § 2-2-121(2)(a) now prohibits a county attorney from using "public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purpose."

It is clear that the amendment to Mont. Code Ann. § 2-2-121 described in the preceding paragraph was adopted without consideration of its effect on part-time county attorneys. Nothing in the legislative history of the new ethics laws suggests that the change in the statute was prompted by concerns about the existing arrangements between part-time county attorneys and the counties

they serve. Thus, if a consequence of the adoption of the amendment is to outlaw the existing arrangements between part-time county attorneys and their counties, that consequence clearly was unintended by the legislature.

The amendment to Mont. Code Ann. § 2-2-121 was adopted for the salutary purpose of extending to local governments the laws precluding the conduct of private business by a government employee on government time or using the equipment that the government agency provided for the government employee's use in completing the employee's normal government job duties. While this rule has obvious and appropriate applicability to full-time state employees and elected officials, the rationale for its application to elected officials who are authorized by law to engage in "private business" during ordinary working hours, without being required to account for the officials' time on an hour-for-hour basis, is less clear. While at least two part-time county attorneys in Montana keep separate offices for county and private business, the fact that the vast majority do not suggests that a part-time county attorney must, as a matter of practical necessity in most counties, conduct a single law practice from a single location encompassing both county and private practice matters.

The 1995 amendment to Mont. Code Ann. § 2-2-121 has potential application to a variety of aspects of the part-time county attorney's practice, calling into question (1) those arrangements under which the county attorney is provided an office in the courthouse, or receives an allowance from the county to defray the cost of renting office space outside the courthouse, from which both county and private legal work is done; (2) arrangements under which the county provides, or contributes to the rental of, equipment, such as office furniture, word processing equipment, or photocopiers, which the county attorney uses for both county and private business; and (3) arrangements under which the county provides secretarial assistance which the county attorney uses for both county and private business.

In my opinion, the legislature did not intend by its enactment of the 1995 amendments to modify the discretion of county governing bodies in determining how to provide for the needs of county officials for office space, equipment, and support staff, nor was it the legislative objective to change in a fundamental way the traditional relationships, grown over a century of experience, between part-time county attorneys and the counties. A review of the laws governing the powers of county commissioners with reference to the three areas of the part-time county attorney's practice noted in the preceding paragraph will demonstrate that under proper conditions arrangements can be entered into between the part-time county attorneys and the counties which do not violate Mont. Code Ann. § 2-2-121(2)(a).

It is a fundamental rule of statutory interpretation that all statutes dealing with a subject are to be read together, with effect given to each if reasonably possible. Crist v. Segna, 191 Mont. 210, 212, 622 P.2d 1028, 1029 (1981). Repeals by implication are not favored, and it should not be lightly assumed that the legislature silently amended or repealed existing law while passing legislation on a related subject. State v. Gafford, 172 Mont. 380, 388, 563 P.2d 1129, 1134 (1977). In this case, an existing body of statutory and common law governs the duties of county commissioners to provide equipment and other support for county officers, the power of the commissioners to exercise discretion in that regard, and their power to contract with relation to county property.

In State ex rel. Taylor v. County Commissioners, 128 Mont. 102, 270 P.2d 994 (1954), the Montana Supreme Court considered the appeal of the Missoula County Commissioners from a district court order directing them to provide suitable office space for the county auditor. The Court affirmed the district court's order, observing that if suitable office space was not available in the courthouse the commissioners had the power to lease suitable space. 128 Mont. at 111. The Court's decision implicitly recognizes that the commissioners have a duty to provide office space and equipment for county officers, id. ("The office of county auditor is an important one with many duties and its proper fulfillment requires proper housing, help, and equipment"), and the decision holds that the commissioners must exercise sound discretion in deciding what office space and equipment to provide. Several early opinions of this office express the same rule. See, e.g., 8 Op. Att'y Gen. 96 (1919) (commissioners have duty to provide office for county surveyor).

Other early opinions of this office recognize that expenses incurred by the county attorney in the exercise of official duties are appropriate charges against the county. A series of opinions dealing with the issue of the payment by the county of the charges for a "stenographer" for the county attorney can be found, culminating in the decision of the Montana Supreme Court in In re Hyde, 73 Mont. 363, 236 P. 248 (1925), in which the Court held that the county attorney could retain a stenographer to provide necessary assistance in the performance of official duties, and that charges for the stenographer's services were properly payable by the commissioners. No fewer than five prior opinions of this office had reached the same conclusion. 11 Op. Att'y Gen. No. 62 (1924); 10 Op. Att'y Gen. 167; 9 Op. Att'y Gen. 277; 5 Op. Att'y Gen. 275 (1913); 3 Op. Att'y Gen. 64.

It is also clear that the commissioners have the discretion to hire employees to assist county officers in the performance of their duties. In Spotorno v. Board of Commissioners, 212 Mont. 253, 687 P.2d 720 (1984), the Court rejected the claim by the county auditor that she had inherent authority to hire as many deputies as she saw fit, holding that by statute the commissioners had the power to

determine how many deputies or assistants could be hired as employees of the county to serve a county officer. 212 Mont. at 255-56, citing Mont. Code Ann. § 7-4-2402. The commissioners also have the discretion to make other expenditures of county funds to provide necessary space and equipment for county officers. 28 Op. Att'y Gen. No. 42 (1959) (commissioners may expend county funds to provide housing for sheriff and his family at the county jail facility); 28 Op. Att'y Gen. No. 13 (1959) (commissioners may expend public funds for sheriff's and deputies' uniforms).

In exercising these powers and duties, the commissioners may follow the statutes generally defining their authority in the conduct of county business. All counties have the power to make such contracts as are necessary to the exercise of their powers and duties. Mont. Code Ann. § 7-1-2103(3).

The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.

Mont. Code Ann. § 7-5-2101(1). Among the powers granted to the commissioners is the power to lease county equipment to private entities. Mont. Code Ann. § 7-8-2112 provides:

7-8-2112. Written agreements for loan or lease of county tools and equipment. Whenever county tools, machinery, or equipment are loaned or leased to private individuals, firms, associations, organizations, or corporations, they shall execute a written agreement stating the purpose of such loan or lease, the compensation to be paid the county, and that such tools, machinery, and equipment will be returned in good condition.

The commissioners also have the power to lease space in county buildings for private use. 16 Op. Att'y Gen. No. 212 (1935).

Applying these rules to the questions at hand, I conclude that the 1995 amendments to Mont. Code Ann. § 2-2-121 do not erect an insurmountable barrier to the use by a part-time county attorney of the same office space, equipment, and administrative support personnel for both county business and private law practice business.

1. Office Space. The commissioners clearly have the power to provide office space for the county attorney in the courthouse, or, if no suitable space is available in the courthouse, to lease space outside the courthouse for the county attorney's use. Mont. Code Ann. § 7-8-2101; cf. 23 Op. Att'y Gen. No. 20 (1949) (claim for

rent of county attorney office improper when suitable office space available in county building).

In my opinion, it is not unlawful for the county attorney to conduct both private and county business from office space provided by the county in the courthouse if the county attorney enters into a written agreement with the county commissioners leasing the use of the space for the county attorney's private law practice. The statutes governing the use of county buildings give the county commissioners the power to lease space in them for private use. 16 Op. Att'y Gen. No. 212 (1935); Mont. Code Ann. § 7-8-2231. If the commissioners and the county attorney enter into a contract in which the commissioners let the space for the use of the county attorney's private practice, the county attorney is not using public facilities for private business purposes, but rather is using space to which the county attorney, in the capacity of a private party, has a contract right for which valuable consideration has been furnished to the county. The adequacy of the consideration for the contract is a matter left to the discretion of the commissioners, subject to judicial review for abuse of that discretion.

As an alternative, it is clearly allowable for the commissioners to rent private office space for the county attorney if suitable office space is not available in the courthouse. Under the authorities cited earlier in this opinion, the commissioners have a duty to provide office space for the county attorney. See, e.g., Taylor, 128 Mont. at 111. If suitable space is not available in county buildings, the commissioners clearly can meet this obligation by paying for the rental of suitable office space from which the county attorney conducts both private and county business. 23 Op. Att'y Gen. No. 20 (1949) holds that the commissioners cannot approve payment of a claim for office space for the county attorney "when suitable quarters are available in the Court House," but is silent as to how the determination is to be made that "suitable quarters" are available. In my opinion that is a matter left to the discretion of the county commissioners, subject to review only for abuse of discretion. See Taylor, 128 Mont. at 111-12. Under such an arrangement, the county attorney can avoid a violation of Mont. Code Ann. § 2-2-121(2)(a) by leasing back a portion of the office space provided by the county for the conduct of the county attorney's private practice.

When the commissioners share the cost of office space for the county attorney, with both the county attorney and the county paying a portion of the cost, in my opinion the provisions of Mont. Code Ann. § 2-2-121(2)(a) do not come into play. Under this scenario, the county attorney pays a portion of the office rent for the privilege of conducting a private business there.

Under any of these scenarios, it is certainly advisable for the county attorney and the commissioners to enter into a written

agreement setting forth the terms under which the county attorney makes use of office space provided by the county. While no statute requires the county and county attorney to reduce the details of their relationship to writing, a written contract is the best evidence that the use being made of office space for private practice purposes is pursuant to contract and not a violation of Mont. Code Ann. § 2-2-121(2)(a).

2. Office equipment and supplies. Much of what is said above applies with respect to office equipment as well. The commissioners have a duty to provide necessary office equipment for the county attorney's use in conducting county business. Taylor, 128 Mont. at 111. They also have the power to lease county personalty for private use, provided the lease agreement is in writing. Mont. Code Ann. § 7-8-2112. For the reasons expressed above, in my opinion the commissioners can enter into written agreements with the county attorney under which the commissioners purchase office equipment for the county attorney's use and then lease a portion of the use of that equipment to the county attorney for the county attorney's private practice purposes. As an option, the commissioners have the power to satisfy their duty to provide equipment for the county attorney by agreeing to provide an allowance to the county attorney to defray part of the cost of necessary equipment, or by paying a claim submitted by the county attorney for equipment expenses reasonably incurred. Finally, the commissioners can lease for county business purposes the partial use of equipment owned by the county attorney's private practice.

In none of these instances is the county attorney making use of public property for private business purposes in violation of Mont. Code Ann. § 2-2-121(2)(a). In each case, the use made by the county attorney of the property for private purposes is pursuant to either the county attorney's ownership of the equipment or the contract right to use it.

The above discussion applies to durable goods such as furniture, photocopiers, data processing equipment and the like. With respect to consumable supplies such as paper, the county attorney and the county should enter into an agreement prorating the cost of any items which the county attorney does not provide out of the overhead of the private practice.

3. Administrative support staff. Perhaps the most difficult issues in the application of the 1995 amendments to Mont. Code Ann. § 2-2-121(2)(a) arise with respect to the shared use of support staff. In some counties, the county provides a full-time county employee to serve as secretary for the county attorney. This employee performs duties with respect to both county business and the county attorney's private practice. Such an arrangement seems to violate the express terms of Mont. Code Ann. § 2-2-121(2)(a) in that the secretary is performing work on private business while being compensated by the county. It also may violate Mont. Code

Ann. § 7-5-2108, which requires full-time county employees to work a 40-hour week.

If a secretary does not in fact work a 40-hour week on county business, a better arrangement, and one which clearly does not violate the statute, would be for the county to hire the secretary part-time, for a portion of the 40-hour week corresponding to a reasonable estimate of the division of the secretary's time between private and county business. The county should then enter into an agreement with the county attorney to reimburse the county attorney for the cost of any secretarial services provided by the secretary in excess of the amount for which the county is paying the secretary, and, conversely, for the county attorney to reimburse the county for the cost of any secretarial services when the secretary works less than that amount on county business. This arrangement is already in place in some counties in Montana, and appears to be working satisfactorily. By accounting for the secretary's time with respect to county and private practice business, the secretary avoids conflict with the requirement that county time not be used for private business purposes.

The county attorney can also avoid violating the statute by hiring a secretary and then presenting a claim to the county for that portion of the secretary's time each month spent on county business. The Montana Supreme Court held in Hyde that the costs of necessary administrative support services are a legitimate charge against the county. A properly documented claim for these charges must be paid by the commissioners.

I recognize that certain items of the secretary's time may not be accountable with precision. Time spent in general office management activities, described in an earlier opinion of this office as time spent "keeping the office open," 10 Op. Att'y Gen. 167 at 168, may be an appropriate charge against the county if the commissioners find that the time was reasonably necessary to the conduct of the county's business by the county attorney. The opinion cited suggests that time spent simply "keeping the office open" is not a legitimate charge against the county, but I am not inclined to agree with that position. First, county attorneys are obligated by statute to keep their offices open during office hours established by the commissioners. Mont. Code Ann. §§ 7-4-102, 7-4-2211. Moreover, the opinion cited above was issued at a time when attorneys frequently practiced without administrative support personnel, and at that time the expenditure of time to "keep the office open" may well have been found to be an extravagance. In today's law office environment, the assistance of secretarial personnel, at a minimum, to handle correspondence, answer telephones, and perform other general office management tasks is a necessity, particularly for a government office that must remain open to the public. I hold that reasonable charges therefor against the county must be paid. The cited opinion holds that the commissioners exercise sound discretion in determining whether such

charges are reasonable, and that the reasonableness of the charges is a question of fact.

I recognize that it may be impossible, or at least impracticable, for a support staff employee to allocate certain tasks as county work or private practice work. To address this problem, the county attorney and the county may agree in advance on an allocation of the cost of the time of the secretary between the county and the county attorney's private practice. Such an agreement, if reasonable, would avoid violation of Mont. Code Ann. § 2-2-121(2)(a).

Although not presented directly by your opinion request, the question could arise whether these agreements between the county commissioners and the part-time county attorney violate Mont. Code Ann. § 2-2-105(2), which provides in pertinent part:

[A] public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

In my opinion, this provision has no application where the official action in question is an agreement between the county and a part-time county attorney to allocate expenses for office space, office equipment, support staff, and other items required for the county attorney's law practice.

The part-time county attorney is specifically authorized to "acquire an interest" in a private practice by the statutes governing the practice of law by county attorneys. See, e.g., Mont. Code Ann. § 7-4-2704(2). Decisions made by the county governing body with respect to allowance of claims for expenses incurred by the part-time county attorney in the performance of official duties will always have the potential to have an effect on the county attorney's economic interests with respect to the private practice, since any expenses not allowed by the county will, in the ordinary course of things, be borne by revenues produced by the private practice. In practical effect, it would be unlikely that a part-time county attorney could engage in private practice without having reason to believe that at some point the county would have to take official action on a matter affecting the county attorney's financial interests.

The purpose of the agreement between the part-time county attorney and the county is not, however, to confer an economic benefit on the county attorney. To the contrary, the agreement should serve to ensure that the county pays only for those expenses that are reasonably required by the county attorney for performance of the official duties of the office, and that the county attorney's

private practice pays its own way without subsidy from the taxpayers. Viewed in this light, in my opinion the county does not take an action for the economic benefit of the county attorney when it reaches such an agreement, provided the agreement reasonably allocates costs between the county and the county attorney. Such an agreement does not violate Mont. Code Ann. § 2-2-105(2).

Because of the proliferation of different arrangements between part-time county attorneys and the counties they serve, it is not possible in this opinion to address every issue presented by the 1995 amendments to Mont. Code Ann. § 2-2-121(2)(a). However, from the foregoing it is clear that in order to avoid conflict with the statute, the arrangement between the county attorney and the county must be documented in writing. Any allowance by the county of use of county property not otherwise available for use by the public, whether office space or equipment, for private practice purposes should be documented by an appropriate lease agreement between the county and the county attorney's private practice. Any arrangement for the shared use of support staff between county business and the county attorney's private practice should likewise be documented in such a way as to demonstrate that the county attorney is defraying the cost of any time spent on private practice matters.

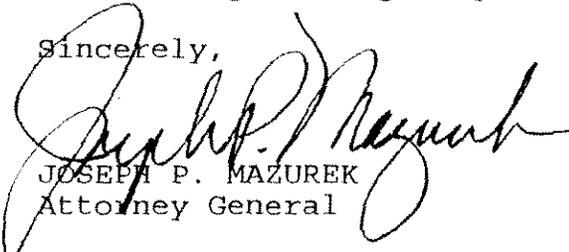
Clearly, the 1995 amendments to the ethics laws did not address the effects that these changes would have on the established practices of part-time county attorneys. In every case, the arrangements between the part-time county attorneys and the counties have been established with the blessings of the elected county commissioners, and the arrangements have existed for decades without any hint that they involve unethical conduct by part-time county attorneys. The 1997 legislative session may wish to consider amendments to the ethics law to clarify this area. I conclude, however, that so long as the arrangements are approved by the governing body in writing as outlined above, a part-time county attorney may avoid violating the provisions of Mont. Code Ann. § 2-2-121(2)(a), as amended by chapter 562.

THEREFORE, IT IS MY OPINION:

1. The county governing body may satisfy its obligation to provide office space for a part-time county attorney by providing space in a county building, or if no suitable space is available by renting office space, provided that use of the space for the county attorney's private practice occurs only through an agreement between the county and the county attorney leasing the use of the space for the county attorney's private business purposes.

2. In the alternative, the governing body can allow a claim by the county attorney for the rental of office space needed to conduct the county's business, provided suitable office space is not available in county buildings.
3. The county governing body may satisfy its obligation to provide necessary equipment for a part-time county attorney by providing the use of equipment owned by the county, or if no suitable equipment is available by renting equipment, provided that use of the equipment for the county attorney's private practice occurs only through an agreement between the county and the county attorney leasing the use of the equipment for the county attorney's private business purposes.
4. A secretary employed by the county to assist the county attorney may work on the county attorney's private business during time when the secretary's services are not needed on county business, provided the county attorney accounts for the time of the secretary spent on private business and reimburses the county for any county-compensated time spent on the county attorney's private business.
5. A claim by a county attorney for secretarial services reasonably required for the conduct of the county attorney's official duties is a legitimate claim against the county. The reasonableness of the claim is a question of fact vested in the sound discretion of the county governing body.
6. A part-time county attorney may conduct private practice using office space, equipment, or support staff provided by the county without violating Mont. Code Ann. § 2-2-121(2)(a) if the county governing body has agreed in writing to the arrangement in compliance with applicable statutes and common law rules governing the county governing body's authority over county property.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/cdt/brf